

MANDATE04-11025
USDC/MA
Tauro, J**United States Court of Appeals
For the First Circuit**

No. 05-1589

ERNEST N. BENJAMIN,
Petitioner, Appellant,

v.

LUIS SPENCER, SUPERINTENDENT,
Respondent, Appellee.

JUDGMENT**Entered: February 15, 2006**

By order entered January 30, 2006, appellant Ernest Benjamin was directed to notify this court if he sought to pursue an appeal from the district court's denial of his 2004 habeas petition as second or successive. Appellant was warned that failure to respond by 2/14/06 would lead to dismissal of Appeal No. 05-1589 for lack of prosecution.

Appellant having failed to file a timely response, it is hereby ordered that Appeal No. 05-1589 be dismissed in accordance with Local Rule 3(b). Appeal No. 05-2328 remains pending.

By the Court:
Richard Cushing Donovan, Clerk

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk

RM
Deputy Clerk

Date: 3/9/06

MARGARET CARTER

By: _____
Chief Deputy Clerk

[cc: Ernest N. Benjamin, Eva M. Badway, AAG]